HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.937 OF 2005

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Between:

M/s.Hemarajani Tubes Pvt Ltd,

(A company incorporated under the Indian

Companies Act, 1956) Door No.5-1-568/3,

Hill Street, Ranigunj, Secunderabad.

..... Appellant

AND

The Central Store Purchase Organisation,

Rep by its Industries Officer, SK Nazeer Hussain

And another.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri Gopal Hemarajani

Representataive of the

appellant.

Counsel for Respondent No. 1 : Sri S.M.Subhan

Counsel for Respondent No. 2 : Government Pleader for

Industries and Commerce.

Dated 28/3/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 18.3.2005 passed by the learned Single Judge, whereby he allowed the writ petition filed by respondent No.1 – The Central Store Purchase Organisation, Maharashtra (Mumbai) and quashed order dated 17.7.2004 passed by The Andhra Pradesh Industry Facilitation Council, Hyderabad (respondent No.1).

The appellant filed claim petition under The Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short 'the Act') for issuance of a direction to the non-petitioner (respondent No.1) to pay an amount of Rs.1,61,18,324/-. Notice of the petition was duly served on respondent No.1, but no one appeared on its behalf. However, respondent No.1 seems to have sent some communication to respondent No.2 questioning its jurisdiction to entertain the petition filed by the appellant. It also requested for supply of some documents. Respondent No.2 sent the required documents, but even then respondent No.1

failed to file reply. Therefore, respondent No.2 appears to have decided to hold ex parte proceedings. After some time, Commissionerate of Industries, Government of Andhra Pradesh sent letter No.38/1/3/120, dated 14.7.2004 to Directorate of Industries, Mumbai informing the latter that respondent No.2 has jurisdiction to entertain the claim cases of SSI and Ancillary Industrial Undertakings registered with Department of Industries, Government of Andhra Pradesh. It was also mentioned that respondent No.2 has jurisdiction to entertain the case filed by the writ petitioner (appellant herein). Simultaneously, a direction was issued to respondent No.1 to appear before respondent No.2 either in person or through an authorised representative with an indication that its failure to do so may lead to the passing of an award on the basis of evidence produced by the appellant-applicant. For the sake of convenience, communication dated 14.7.2004 is reproduced below:

> " While enclosing a copy of G.O.Ms.No.307 Inds. & Comm. (SSI) Department dated 11.10.1999. The Respondent, Directorate of Industries, Government of Maharashtra is hereby informed that the APIFC have jurisdiction to entertain the claim cases of SSI and Ancillary Industrial Undertakings registered with Department of Industries, Government of Andhra Pradesh.
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> Since the petitioner unit is a PMT SSI unit registered with Department of Industries, Government of Andhra Pradesh and functioning with in Andhra Pradesh. The APIFC have jurisdiction to entertain these cases.
>
> The Respondent is directed to appear before the Council either in person or through an authorized person. Failing which the Council may continue the proceedings and make an award on the evidence before it."

The aforementioned communication was received by respondent No.1 on 20th July, 2004. But, three days before that date, respondent No.2 passed order dated 17.7.2004 whereby respondent No.1 was directed to pay Rs.1,27,921/- to the appellant with interest at the rate of 10%.

Respondent No.1 challenged order dated 17.7.2004 by filing writ petition under Article 226 of the Constitution of India, which was registered as Writ Petition No.21693 of 2004. In the affidavit filed on behalf of respondent No.1, it was pleaded that order dated 17.7.2004 is vitiated due to violation of the rules of natural justice because no particular date was specified in communication dated 14.7.2004 for

appearance and the order under challenge was passed three days prior to the receipt of notice.

The learned Single Judge, after going through the averments contained in the affidavit filed in support of the writ petition and the documents annexed with it came to the conclusion that order dated 17.7.2004 passed by respondent No.2 is vitiated due to violation of the rules of natural justice. Accordingly, he quashed the order impugned in the writ petition and directed that writ petitioner (respondent No.1 herein) shall file counter within one month. The learned Single Judge also directed respondent No.2 to decide the matter within a further period of two months.

Sri Gopal Hemarajani, who has appeared on behalf of the appellant, submitted that respondent No.2 had passed order dated 17.5.2004 for ex parte proceedings and, therefore, communication dated 14.7.2004 cannot be treated as a notice for fresh hearing. He argued that the learned Single Judge committed a serious error by upsetting order dated 17.7.2004 on the ground of violation of the rules of natural justice because communication dated 14.7.2004 was not meant for fixing a date for hearing. Sri Gopal Hemarajani emphasised that letter dated 14.7.2004 sent by Commissionerate of Industries was meant to inform the representative of respondent No.1 that its objection to the jurisdiction of respondent No.2 was without substance and by no stretch of imagination that letter could be construed as a notice for hearing. In support of his arguments, Sri Hemarajani produced photostat copies of the notices sent by respondent No.2 to the parties for their appearance on the specified dates.

Sri S.M.Subhan, Advocate for respondent No.1 supported the order under challenge and argued that the learned Single Judge did not commit any error by directing fresh adjudication of the petition filed by the appellant. He submitted that in the face of communication dated 14.7.2004 by the Commissionerate of Industries, Government of Andhra Pradesh to the Directorate of Industries, Mumbai, requiring respondent No.1 to appear either in person or through an authorized person, respondent No.2 could not have passed order dated 17.7.2004.

We have given serious thought to the respective submissions. In our opinion, the appeal is meritless and is liable to be dismissed. A reading of the last paragraph of

communication dated 14.7.2004 leaves no manner of doubt that respondent No.1 was called upon to appear before respondent No.2 either in person or through authorised representative only for the purpose of hearing of the petition filed by the appellant. If that was not so, there was no occasion for the Commissionerate of Industries, Andhra Pradesh to indicate that if respondent No.1 fails to appear, then respondent No.1 will continue the proceedings and will pass appropriate award. In our considered view, letter dated 14.7.2004 was meant not only to inform respondent No.1 that its objection to the jurisdiction of respondent No.2 has been overruled, but was also meant to inform it that further hearing will be held before respondent No.2.

There is no dispute between the parties that communication dated 14.7.2004 was received by respondent No.1 on 20.7.2004 i.e. three days before the date on which respondent No.2 passed order in favour of the appellant. Therefore, there is no escape from the conclusion that order dated 17.7.2004 was passed in violation of rules of natural justice. As a corollary to this, we hold that the learned Single Judge did not commit any error by remanding the case to respondent No.2 for fresh adjudication of the claim made by the appellant.

For the reasons mentioned above, the appeal is dismissed with the direction to respondent No.2 to decide the application of appellant afresh, as early as possible, but latest by 5.6.2006.

Learned counsel for respondent No.1 says that in terms of the direction given by the learned Single Judge, his client had filed reply on 12.4.2005. If that be so, the appellant may file rejoinder within next two weeks. Thereafter, respondent No.2 shall hear the representatives of the parties and decide the application of the appellant by passing a speaking order.

While disposing of the appeal in the manner indicated above, we direct that the amount deposited by respondent No.1 in pursuance of interim order passed by the learned Single Judge be remitted to respondent No.2. The disbursal of that amount would depend on the final adjudication of the application filed by the appellant.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD,J

msv/ARS